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composite material in a support for a frozen comestible. [0166] - [0172] Additional fun ingredients 100 may be attached or embedded. [0394] "More than one kind of barrier 86 may be layered to add more flavor." [0176]

The Claims Recite Novel Features over Feybusch Under § 102

The Examiner has rejected the claims under 35 USC 102(b) as being anticipated by Feybusch (US 1638480). The Examiner suggests that Feybusch teaches edible cones for the support of frozen confections such as ice creams or sundaes, i.e., edible support. The support or cone taught by Feybusch comprises of two ingredient material, i.e., cone making pastry material (such as sugar flour etc) and edible adhesive material, such as, molasses, and popcorn or nuts or brittle or puffed rice.

The Examiner suggests that the ingredients of sugar, water and flour, etc., that are typical ingredients of the pastry cone as taught by Feybusch comprise an ingredient in the support as recited in claim 320.

Applicant disagrees that Feybusch anticipates Applicant's claims. Applicant has claimed a composite material ingredient or a material comprising two ingredient materials as an ingredient. Applicant's "bite size ingredient" comprises a material that comprises two ingredient materials, an example being Nestle Bites Kit Kat (in specification [0167] [0394] [0390] Kit Kat - IDS). The sugar, water, and flour ingredients Feybusch comprise only raw ingredients and do not comprise a material comprising two ingredient materials, or an edible composite material, as claimed. Feybusch does not anticipate Applicant's ingredient that comprises a material comprising two ingredient materials, nor a composite material ingredient.

None of Feybusch's materials comprise a material comprising two ingredient materials, as does Applicant's material. None of Feybusch's materials comprise an edible composite material, as does Applicant's material.

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Feybusch teaches: "I take the usual pastry cone 10 and provide the same with a coating 11 of an edible adhesive material, such as , for example molasses." of Feybusch (pg. 1, col. 2, lls. 58-62)

Usual pastry cone has only one ingredient material, i.e. baked cone. Molasses, as well, comprises only one ingredient material, boiled sugar.

"After the coating is applied to the exterior of the cone, the cone is then *rolled in* popcorn to cause the popcorn to adhere to the molasses and form an outer layer 12 on the exterior of the cone..." (pg. 1, col. 2, lls. 64-68)

Popcorn is a separate material which only has a single ingredient material, i.e. corn.

"Instead of popcorn, I might employ other brittle edible substances, such as peanuts or puffed rice. (pg. 1, col. 2, lls. 91-93)

Peanuts is only one ingredient material, nut. Puffed rice is also only one ingredient material, rice.

"Another object is to provide a new and improved construction in which the cone is coated with a brittle edible substance, such as, for instance, popcorn, peanuts or so called peanut brittle, puffed rice, etc. (pg. 1, col. 1, lls 20 - 24)

Peanut brittle is also a single ingredient material, a boiled candy. Sugar is boiled and peanuts are mixed into the boiled sugar after which it is hardened into a single ingredient material. None of Feybusch's materials comprise an edible composite material or a material comprising two ingredient materials. Therefore Feybusch does not anticipate any of Applicant's claims.

Regarding claim 321, regarding the molasses, popcorn, pastry cone, nuts and puffed rice being two edible ingredient materials in the support.

Feybusch does not comprise a material comprising two ingredient materials. Feybusch's

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molasses material comprises only one ingredient material, not two. His popcorn material comprises only one ingredient material, the nuts and puffed rice and brittle, only one ingredient material each, not two.

Regarding claim 322, Feybusch does not add a homogenous material to a material comprising two ingredient materials, such as a Nestle Bites Kit Kat used as an ingredient in the support. He adds molasses to a single ingredient material, baked conc.

Regarding claim 323, Feybusch does not include a non edible material in a support comprising a material that already comprises two ingredient materials, or a composite material, only to a support comprising materials that have only one ingredient material.

Regarding claim 324, Feybusch does not comprise two ingredient material in a material that comprises the support.

Regarding claim 325, Feybusch does not comprise a handle having a material that comprises two ingredient materials. Feybusch comprises separate materials, which each has only one ingredient material, not two ingredient materials.

Regarding claims 326, 334, 340, Feybusch does not comprise a material that has two ingredient materials in his support or an edible composite material in his support, and clearly does not show a material comprising two ingredient materials or an edible composite material with Applicant's ingredients, such as graham, gelatin, or a mini colored candy chip. None of Feybusch's materials comprise more than one ingredient material.

Claims 327, 339, has been omitted.

Claim 328 Feybusch does not comprise a confection bar, but teaches of a cone. Furthermore, his cone materials each comprises only a single ingredient material, not two ingredient materials in the same material.

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Claims 329, 335, 341, Feybusch does not add a plurality of ingredients to a material that already comprises two ingredient materials. He adds popcorn, molasses, or nuts, or the like, to a material that has only one ingredient material, baked cone.

Claim 330, 337, 342, Feybusch does not add ice cream or a frozen comestible to a support that comprises a material that includes two ingredient materials. His materials each have only one ingredient material, i.e. baked cone, boiled molasses, boiled candy, i.e. peanut brittle, nut, or corn. He adds ice cream to a material comprising only a single ingredient material.

Claim 331, Feybusch does not add an edible component to a support comprising a material that already has two ingredient materials or an edible composite material. None of his materials, as above, comprise any more than a single ingredient material. Therefore he does not add molasses or popcorn to any material comprising two ingredient materials. Peanut brittle or brittle bits are a single material, cooked and hardened into one ingredient material. Cracking up the single ingredient material does not make it more than one ingredient material.

Claim 332, Feybusch does not teach of a support comprising an edible composite material or a material comprising two ingredient materials. His baked cone, boiled molasses, corn and nuts are each only one ingredient material and does not anticipate Applicant's material comprising two ingredient materials.

Claim 333, 338, Feybusch does not teach of a support, handle, or ingredient in the support that is a material with two ingredient materials in it, or that comprises an edible composite material. Each of Feybusch's materials comprise only one ingredient material, i.e. baked cone, boiled sugar, i.e. molasses, boiled candy, i.e. peanut brittle, corn or nut. Therefore he does not teach of a support, a handle or an ingredient in the support or outside the support, (Nestle Bites attached to the outside of the support) that comprises an edible composite material, or a material comprising two ingredient materials.

Claim 336, "composite" refers to A material, not to several materials glued together. Therefore

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Feybusch's single ingredient material components glued together does not qualify as "a composite material. The cone base and molasses coating glued together does not show or teach an edible composite material.

368. A support for a frozen comestible comprising a material comprising two edible ingredient materials, and means for making said support.

Claim 368, (343) Feybusch does not teach of a material comprising two edible ingredient materials, but teaches only of a material having a single ingredient material. Cone making pastry material is baked and shows only one ingredient material, baked cone. Molasses is boiled and is only a single ingredient material, boiled sugar or candy, popcorn or nuts or brittle or puffed rice each show only one ingredient material, corn, nut, boiled candy or rice, respectively. He does not show any material that has two ingredient materials.

Claim 344, Feybusch does not add ice cream, or the like, to a material comprising two ingredient materials, or an edible composite material, since a material comprising two ingredient materials, or an edible composite material does not exist in his support.

Therefore, Feybusch does not anticipate any of Applicant's claims. Applicant respectfully requests reconsideration and allowance of the claims.

The Claims Recite Novel Features over Musher Under § 102

The Examiner recites: Musher teaches ice cream (frozen comestible) on an edible support structure or a composite support which has at least two edible discernable (i.e. perceptible) edible materials or components or members that are combined together to make the support, i.e., two combined ingredient materials (page 1: column 1, lines 37-46 and column 2 lines 40-55 also (page 4: column 1, line 72 to column 2, line 23), as recited in claims 319, 322, 338, and 343.

Examiner has admitted that Musher's support is made of at least two edible materials or

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components or members that are combined together to make the support. Examiner refers to the support of Musher as being a composite support.

. Examiner notes that Musher has at least two edible discernable (i.e. perceptible) edible *materials or components or members* that are combined together to make the support,.."

Applicant disagrees with Examiner that Musher anticipates Applicant's claims. Applicant also disagrees with Examiner that Musher comprises a support comprising an edible composite material, or any material comprising two ingredient materials.

Furthermore, Musher teaches of a frozen supported confection (title, abstract, specification, claims). Musher has not taught of supporting a frozen comestible on a non frozen support.

<http://dictionary.reference.com/browse/material>

Material, n. 1. the substance or substances of which a thing is made or composed: substance or substances out of which a thing is or can be made.

When considering a § 102 rejection all of the elements of a claim must be anticipated. The support of Musher, as completed, i.e. taught, is a frozen support. (see title, claims, specification) Applicant's support is a non frozen support. Therefore, Musher has not anticipated Applicant's claims of a non frozen support under § 102. Applicant's claims are not anticipated regarding this aspect alone.

In addition, "composite" refers to "a material," [that comprises two separate ingredient materials that pre-exist the composite] (Tuwien mmc - IDS). Examiner suggests that Musher comprises a composite support. Musher, however, does not comprise a composite support, as none of the *materials* in his support comprise two ingredient materials. "Composite" does not refer to components added together and therefore attaching components, such as a framework to a stick or a lollipop to a stick, as Examiner suggests, is not a "composite [material] support." Musher does not comprise a material that comprises two ingredient materials. Therefore, Musher's

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support is not a composite support. Furthermore, Musher does not comprise "A material" comprising two ingredient materials, or a composite, or a composite material, and does not anticipate ANY of Applicant's claims.

The material or substance of which Musher's stick is made (of all figures 1-6), and completed, and taught, is a *baked material*, i.e. an "edible baked or toasted product" (pg. 6, lls. 43 - 47) This baked stick is a single ingredient material. It is made of only raw ingredients of flour, and liquids. It comprises only ONE ingredient material, not two. Therefore it is not a material comprising two ingredient materials. Therefore, it is also not an edible composite material.

The material or substance of which Musher's framework structure of figure 3, item 21, as completed, or taught, is a *baked material*. "In the embodiment of figure 3, a dough or cereal product 21 may be baked on the stick 22. This will provide the grille or latticework formation 21, attached to the stick 22." Page 6, lines 72-75. Musher's baked framework structure comprises only one ingredient material, baked grille, not two.

The material or substance of which Musher's lollipop is a single ingredient material of hard candy (pg. 5, lls. 54 - 58), or chocolate ribbons, i.e. boiled chocolate candy, in one form or another, i.e. one ingredient material.

Enlargements 19 are either the baked stick in a jagged shape, or baked onto a wooden stick, i.e. only one ingredient material, baked item 19 (pg. 6, lls. 43 - 50).

The material or substance of which Musher's framework structure of figures 1,2,4,5, and 6 is made, completed, and taught, is a boiled candy material, comprising only a single congealed ingredient material, boiled candy.

The boiling point of liquids is approximately 212 degrees Fahrenheit. Musher takes chocolate, sweet fats, or the like, which is solid at room temperature, or hard and chilled at a chilled temperature, (pg. 2, lls. 44-51) boils the chocolate at a high temperature of 200 - 210 degrees (pg.

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3, lls. 61-70) and at this point the flakes, raisins, nuts, etc. are *added into* the molten fat (Example III), "allowed to remain at this temperature in contact with the food pieces for a period of time, (i.e. essentially boiled or boiling). It is then let congeal in a mold. (Example III) "After the congelation has taken place, (hardened) (page 2, col. 2, lls. 75- page 3, col. 1, ll. 1) (Example III) (Example II) "of course, the binding material should be allowed to congeal or harden..."

This is a boiled candy with edible inclusions. When congealed, or hardened or complete as taught, it is only a single ingredient material, boiled candy. It does not matter what the inclusions are, (i.e. cereal, flakes, raisins, nuts) or what shape it takes (lattice) it still hardens into a single ingredient material. As completed, and congealed, Musher's framework structure is only a single ingredient material, boiled candy. This also rings true of Musher's use of temperatures of less than 210 degrees in other embodiments which result in a molten candy into which inclusions are mixed, and allowed to congeal into a hard candy (hardened, above). Musher's chocolate framework is not a "material comprising two ingredient materials" or "an edible composite material."

Therefore, each of Musher's five materials of: 1) stick, 2) the dough framework 21, 3) the chocolate framework, 4) the lollipop, or 5) enlargements 19, each only comprise a single ingredient material. None of his materials comprise two ingredient materials. Therefore, Musher does not anticipate any of Applicant's claims of a material comprising two ingredient materials, or an edible composite material. "Composite," or "composite material" is a well known and universally accepted term, and by definition requires two ingredient, or constituent materials in a single material. (Also see Tuwien - IDS for definition)

Musher also does not show an ingredient in the support that is a material comprising two edible ingredient materials, such as the example of Nestle Bites which can be attached to or embedded in Applicant's support. (See above) Nestle Bites (tm) Kit Kat is a bite size portion of a composite material candy bar known by the same name, Kit Kat.

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Musher's handle does not comprise a material that has two ingredient, or constituent materials. (handle below ice cream level) The material of his handle is a baked stick, i.e. one ingredient material. Musher adds a lollipop to an edible baked or toasted product, which is a single ingredient material. He does not add a lollipop to a support that comprises a material that already has two ingredient materials.

Examiner suggests that "the ingredient materials can be discernible (i.e. perceptible), such as cereal flakes, ribbons, grains etc.

The cereal flakes, grains, etc., are cooked into chocolate, or edible fats and hardened, or congealed into a single ingredient material.

The Examiner suggests that "the composite support is made by attaching the stick to the cereal flakes, sugar, candy flakes, or ribbons, grains, hard fat flakes or ribbons." (page 16 of OA) as claimed.

A composite support is not made by attaching components together, since "composite" refers to a material.

"A composite (or composite material) is defined as a material that consists of at least two constituents (distinct phases or combinations of phases) which are bonded together along the interface in the composite, each of which originates from a separate ingredient material that pre-exists the composite.

...thus it should be distinguished from a wing or other structure made of several components bonded together, ..." see: Applicant's IDS:

<http://mmc-assess.tuwien.ac.at/mmc/Article603.html>

Examiner suggests that "Musher further teaches that the structure pieces around the lollipop, which include candy, can be placed concentrically (e.e. a circle around the lollipop) or maneuvered in some other manner on the support to improve the strength of the support.

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Musher does not place two ingredient materials within the same material concentrically, as does Applicant. Musher attaches a single ingredient material to another single ingredient material, or one component to another component. Therefore Musher does not anticipate Applicant's claims. Musher is using "at least two edible discernable (i.e. perceptible) edible materials or components or members that are combined together to make the support," (Examiner pg. 14 of OA). This is not evidence of a composite material, or a material comprising two ingredient materials.

Examiner suggests that Musher also teaches of a support for a frozen comestible, which comprise of two edible ingredient material, which include a homogeneous material such as candy, a composite material with one or more ingredients for supporting the frozen comestible.

Musher does not add a homogenous material to a material that already comprises two ingredient materials, or a composite material, such as adding a Nestle Bites to a caramel or marshmallow support, or such as embedding a Nestle Bites Kit Kat in a Charleston Chew candy bar. He adds a single ingredient candy material to a single ingredient material support, baked or toasted product.

The Examiner suggests that Musher teaches that the finished product or the composite formed support can be coated with chocolate or sprinkled with other flavoring material, i.e., enrobed or dipped ingredient which is fluid to form a moisture resistant barrier as instantly claimed.

Musher adds a chocolate coating or edible fat with or without inclusions, i.e. single ingredient material, (see above) to the exterior of a single ingredient material stick, baked stick. He does not add a coating of any kind to a support that comprises an edible composite material or to a material that comprises two ingredient materials.

The Examiner suggests that Musher teaches of the ice confection with the support in the figures as instantly claimed.

Musher does not add ice cream or an ice confection to a support that already comprises an edible composite material or to a material that comprises two ingredient materials. He adds ice cream to

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a material that only comprises a single ingredient material, baked stick, or to a boiled candy framework, or to a baked framework 21, each having only a single ingredient material, as above.

Musher therefore does not anticipate any of Applicant's claims. Applicant respectfully requests reconsideration and allowance of the claims.

Independent claims 368 (means), 370 (method), and 377 (method) recite similar limitations including a means claim comprising a material comprising two ingredient materials and a method claim comprising a material comprising two ingredient materials and a method claim comprising an edible composite material. These similar claims and their respective dependent claims are also respectfully submitted to be patentable over the references to Feybusch and Musher and should be allowed.

Regarding the advisory action:

Page 3 of the advisory action, continuation of 13, states that the amendment to the specification May 16, 2008 has not been entered because of the following reasons:

Examiner notes: Regarding the addition of "composite material" to the specification, it is noted that the Applicant may have support for the generic term "composite material" in the original claims 6 and 19, however the disclosure does not support that a multi-ingredient candy bar comprises composite material as recited.

Original claim 6 recites: The edible support of claim 1, wherein said *support is a composite material*, having a plurality of ingredients, said edible support being suited for a plurality of configurations and orientations, wherein said support is a *candy bar*, wherein said support is a *cookie bar*, wherein said support is a *granola bar*.

This claim specifically states that the support comprising a composite material is a candy bar, cookie bar, or granola bar.

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Regarding claim 19, “wherein said support is a composite material, having a plurality of ingredients,...” Claim 21 recites: the supported comestible of claim 19 wherein said support is a candy bar. Claim 22 recites: the supported comestible of claim 19 wherein said support is a cookie bar. Claim 23 recites: The supported comestible of claim 19 wherein said support is a granola bar.

The claims specifically say that Applicant’s candy bar, cookie bar and granola bar all comprise a composite material. Examiner knows this information, as it was the basis for the required restriction of the claims. See restriction of 12/19/2002.

In addition the objection to the specification:

“Falcone’s support stick does not bend and is not malleable. His support stick does not contain layers of different ingredients or composite ingredients,...”

Since “composite” refers to a “composite material,” as is well known to those familiar in the art of materials, and Applicant had already stated that Falcone did not comprise a “composite” that means that he also does not comprise a composite material, which means that it *does not add new matter to the original disclosure*. See issued patent number 6,815,066 to Elliott, whose issued claims recite only “composite.” to reflect “a composite material.”

Conclusion

For all of the above reasons, Applicant submits that the claims define novel structure under §102, which novel structure is unobvious and thus patentable under §103. Accordingly Applicant respectfully requests reconsideration and allowance of the claims.

Conditional Request For Constructive Assistance

Applicant submits that she has a novel and unobvious invention. She has made a diligent effort to

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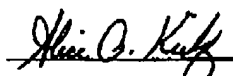
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amend the claims of this application so that they recite novel features of her invention, which she submits are unobvious. If, for any reason, the Examiner believes that the claims of this application are not yet in full condition for allowance, Applicant respectfully requests the Examiner's constructive assistance and suggestions pursuant to the spirit of MPEP §706.03(d) and §707.07(j). This will enable the undersigned to place this application in fully allowable condition as soon as possible and without the need for further proceedings.

Very Respectfully,


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Certificate of Facsimile: I certify that on the date below, this document and referenced attachments, if any, will be faxed to the central fax number of 571-273-8300 to the United States Patent and Trademark Office "Commissioner for Patents" Arlington, Virginia 22313.

2008 July 30,


Alice O. Kiely

Attached:

Drawing sheet 14/19 showing proposed change to Figure 27E.

Request for Continued Examination Transmittal

Credit Card Form 2080/Fee